CrA 2637/98. Single Bench (Criminal)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000059763

High Court of Madhya Pradesh
JABALPUR.
- 7 NOV 1998
Reg. No. 233
Recept Clerk
High Court, Jabal

APPEAL OF PRISONER

No. 8629 Name धरमसिंग

Father's name पिताम्बर सिंह गोंड़ निवासी ग्राम तुरी थाना सकती

Residence जिला बिलासपुर (म0प्र0) Age 75 साल

Sentenced to आँच वर्ष सश्रम कारावास जुर्माना On 14/09/98
-40,000=00रु0 या छः माहै

Under section 20 बी (ii) 18 (b) एनडी by माननीय विशेष न्यायाधीश (एनडीपीएस एक्ट रायपुर (म0प्र0)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 26/10/98

3 Date on which Appeal sent 03/11/98

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 8629 Name धरमसिंह पुत्र पिताम्बर सिंह गोंड़

Confined in केन्द्रीय Jail रायपुर (म0प्र0)

No. 332/तिथि/98 Dated 03/11/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय रजिस्ट्रार जनरल महोदय, माननीय उच्च न्यायालय मध्यप्रदेश जबलपुर, together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न:- विविध प्रकरण: 271/97 की प्रमाणित प्रति।

Superintendent
Central Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

.....

Date of receipt in Appellate Court .....

(P. T. O.)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.2637/98

Dharam Singh

vs.

State of M.P. (C.G.)

J U D G M E N T

Per Hon.R.S.Garg,J :

Being aggrieved by the judgment dated 11-9-1998 passed in Special Case No.271/97 by the learned Special Judge (N.D.P.S.), Raipur convicting the appellant under Section 20(b)(1) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act and sentencing him to undergo rigorous imprisonment for five years and pay fine of Rs.40,000/-, in default of payment of fine to undergo further rigorous imprisonment for six months, the appellant has filed this appeal.

2. The prosecution case in brief is that on 28-7-1997 the then Station House Officer Mr.D.Singh (P.W.9) received an information that the present appellant had stored contraband ganja in his house. After recording the information in the rojnamcha, Mr.D.Singh sent the information to his immediately officer Superior. Mr.Pandey informed Mr. Singh that as the Station House Officer had gone on a patrol, he himself would go for the purpose of conducting the search and raid. The police officers went to the spot. An entry in relation to this fact was also made in the rojnamcha. After reaching the spot alongwith the witnesses, Mr.D.Singh gave a notice to the appellant under Section 50 of the N.D.P.S.Act. As the accused gave

his consent for his search, under the hands of Mr.D.Singh a search was conducted. From the court-yard, under the paddy about 44 packets were recovered, each packet was containing about 4 kg. ganja. ~~About~~ 43 packets were tied with the jute rope while one packet was open. The articles were weighed on the spot, samples were drawn and thereafter the accused so also the articles were brought to the police station. The first information report was recorded. The articles were kept in the malkhana, an information in relation to search, seizure and registration of the crime was sent to the Additional Superintendent of Police, so also to the Superintendent of Police. The sample ganja was sent to the Forensic Science Laboratory for its analysis. Under Ex.P/11 dated 11-8-1997 the Forensic Science Laboratory informed the police that the sample was ganja. Being armed with the statements of the witnesses, panchnamas prepared on the spot and the report of the F.S.L., the prosecution agency filed the challan against the accused. The accused denied the commission of the offence, therefore, was put to trial.

3. The learned trial court after hearing the parties convicted and sentenced the accused as referred to above, therefore, he has come to this Court.

4. Smt.Kiran Jain, learned counsel for the appellant, submits that the seizure witnesses P.W.1 Darasram and P.W.2 Maheshram have turned hostile and as the recovery was made from an open place accessible to the general public, the court below was unjustified in convicting the appellant.

5. On the other hand, learned Shri Ranveer Singh, learned counsel for the State, submits that from the statements of P.W.7 Vakilram, P.W.8 G.G.Pandey and P.W.9 D.Singh, it

would clearly appear that the ganja was recovered ~~xxxx~~ from the appellant's court-yard which was in exclusive possession of the accused. He also submits that the quantity recovered from the appellant is suggestive of the fact that it was not planted by someone else.

6. I have heard the parties at length and have perused the records.

7. True it is that P.W.1 Darasram and P.W.2 Maheshram have not supported the prosecution case but the statements of P.W.7 Vakilram, P.W.8 G.G.Pandey and P.W.9 D.Singh cannot lightly be seen.

8. P.W.7 Vakilram is the resident of the same village. He has testified on oath that the police party took him to the house of the accused and on a search made in the house of the accused 44 packets containing ganja were recovered. He has also testified his signatures on the seizure memo Ex.P/12. P.W.9 Mr.D.Singh is the person who had received the information. He sent the message to P.W.8 Mr.G.G.Pandey. From the statements of these two witnesses, it would clearly appear that after receiving the information about storage of ganja, they reached to the house of the accused, gave him a notice under Section 50 of the Act and thereafter took the search. In the cross-examination of G.G.Pandey, nothing important regarding the recovery has been asked. In the cross-examination, the questions relating to drawing of the sample, etc. were asked. In paragraph 7, the witness clearly stated that there was no thorough-fair in the court-yard of the accused. P.W.9 Mr. D.Singh had also stated that on a search, 44 packets were recovered, 43 packets were packed while the 44th packet was open. According to him, the packets were weighed on

the spot and about 175 kg. ganja was recovered. He has also stated that the packets were kept in seven different gunny bags and the articles so also the accused were brought to the police station. In the cross-examination, the question relating to the warrant was asked. The questions relating to sample were also asked. In para 12, he had stated that he was informed by someone that somebody delivered the contraband ganja at the residence of the accused. He denied the suggestion that the place from where the contrabands were recovered and seized was an open place.

9. From the statements of P.W.7, P.W.8 and P.W.9, it clearly appears that the police officials and witnesses entered in the house of the accused, gave him a notice regarding the search and after obtaining his consent they proceeded with the search. In this search, they recovered 44 packets containing ganja.

10. From their statements, it also appears that the place from where ganja was recovered was in exclusive possession of the appellant and it was not accessible to public. The finding can also be fortified with the assistance of the fact that the said ganja was found under cover of a paddy stack.

11. After hearing the learned counsel for the parties, and going through the records, I am unable to hold that the court below was unjustified in recording the conviction of the appellant. The appellant has been rightly convicted.

12. Smt.Jain at this stage placing strong her/reliance on a

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judgment of the High court of Madhya Pradesh in the matter of Halku vs. State of M.P., reported in 1996(1) Crimes 625, submits that looking to the age of the appellant, he deserves to be let-off on the period already undergone.

13. I have gone through the said judgment. In the said judgment, the High court found that the appellant was an aged man of 63 years, four kilogram ganja was recovered from him and he had already undergone sentence of more than 1½ years. In the present case, the facts are altogether different. About 175 kg. ganja has been recovered from the possession of the appellant. The recovery of this huge quantity does not permit me to reduce the sentence to the period already undergone. The court below was justified in awarding the sentence.

14. The appeal is dismissed.

Sd/-
R.S. Garg
Judge
5-7-2001.

H/-